IOWA Bench Press

Newsletter of the Iowa Judicial Branch January-February 2002

Governor to Accept Legislature's Plans for 02 Cuts

Governor Vilsack has said that he will accept the Legislature's plan for budget cuts to solve the state's $120 million shortfall for the current fiscal year. Senate File 2304, which is on it's way to the Governor, includes cutting 1% from the budgets of most state departments and agencies, taking $15 million from selected unexpended program funds, and using $45 million of the emergency fund for K-12. It also mandates other cuts and allows departments and agencies to address those cuts through salary cuts for all state officials and furloughs for state employees, or other cost reductions. An earlier version of the bill would have mandated furloughs and salary cuts.

Under the bill, the Judicial Branch operating budget would be cut 1% or approximately $1.1 million; another $1.1 million must come from employee furloughs and cuts in judges' salaries, or other cost reductions. However, the Judicial Branch may use up to $1 million from the Enhanced Court Collections Fund, if money is available, to offset the furloughs and salary reductions.

"I'm relieved that we're not forced to implement furloughs and salary cuts, but we still have to come up with $2.5 million in reductions in the four months that remain in the fiscal year," said Chief Justice Louis Lavorato. "The Court will do all it can to get through the fiscal year without salary cuts, lay-offs or furloughs."

The Supreme Court will probably meet early next week to decide how to balance the budget, after it has assessed the condition of the budget and consulted with the districts.

FY 03

The Governor's revised budget for the next fiscal year is due next week. Current projections show a shortfall of at least $250 million for fiscal year 2003. That's based upon the state's revenue estimating conference's optimistic prediction that next year's revenues will be 1.8% higher than the current year's revenues.

Republican legislators are hoping to maintain the status quo, but whether or not they can remains to be seen. The budgets of most state agencies and departments including the Judicial Branch have already been cut to the bone.

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New or Amended Court Rules: July 1, 2001 – December 31, 2001

Bar Fee: Court Rules 105 and 111. *Effective 10/11/01.*

This change increases the fee for application for admission to the bar upon examination from $300 to $325 and increases the fee for admission upon motion from $500 to $575.

Appeals in Termination of Parental Rights Cases: Appellate Rules 5, 6, 10, 11, 13, 16, 17, 32, 151 through 154, Appellate Procedure Timetable No. 3, new forms for termination appeals, and Rule of Juvenile Procedure 4.15. *The rules apply to juvenile court orders entered on or after 1/1/02.*

The Court approved a set of comprehensive changes that significantly reduce the time for filing appeals in termination of parental rights cases. In short, the time period is cut in half and a notice of appeal must be filed within 15 days from entry of the juvenile court order terminating parental rights. The notice of appeal cannot be filed unless signed by appellant's counsel and appellant. To perfect an appeal, the appellant must file with the clerk of the supreme court a petition on appeal, which must be prepared by the appellant's trial counsel. The petition must be filed within 15 days after the filing of the notice of appeal. The trial court must provide written notice in an order terminating parental rights setting out the times for appeal and the requirement for filing a petition on appeal. Following a review of the petition on appeal and any resistance, the appellate court shall determine if full briefing should be ordered.

Levy on Personalty: Rule of Civil Procedure 260. *Effective 10/1/01.*

The Court entered a temporary order and an amendment to implement the provisions of 2000 Iowa Acts H.F. 2513 sections 72 and 73.

Appeals from Magistrate Orders: Rule of Criminal Procedure 54. *Effective 9/10/01.*

The amendment eliminates the process of taking an appeal by delivering a written notice to the magistrate. Written notice must be filed with the clerk of court.

Legal Authorities: Appellate Rules 14, 21, and 25, and Supreme Court Rule 10. *Effective 8/31/01.*

Allows one to cite an unpublished opinion in a brief; however, the opinion shall not constitute controlling legal authority. A copy of the opinion must be attached to the brief along with a certification that counsel has conducted a diligent search for, and fully disclosed, any subsequent disposition of the opinion. If a party intends to cite during oral argument an authority not previously included in its brief, it shall file a notice of additional authority giving a citation for each additional authority upon which the party relies. The party shall serve one copy of the notice on counsel for each party and file twelve copies with the clerk of the supreme court prior to oral argument. If the notice includes a citation to an unpublished opinion, a copy of that opinion shall be attached to the notice.

Rules Renumbering. *Effective 2/15/02.*

The fourth edition of the Iowa Court Rules was approved by the court in November 2001 and took effect February 15, 2002. With two exceptions (the Iowa Code of Professional Responsibility for Lawyers and the Iowa Code of Judicial Conduct), all of the rules have been renumbered in a format similar to that used for the Iowa Administrative Code. The renumbered rules provide for a unique identifier for every rule and follow a consistent internal numbering scheme. The renumbering will result in an easier conversion of the rules to electronic formats, will make it easier to create computer links to court rules, and will have legal research advantages.

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Clerks Question Chief Justice About Budget Cuts

On February 16, Chief Justice Louis Lavorato met with 53 clerks of court, who had gathered in Nevada for a special meeting of the clerks association. Chief Justice Lavorato met with the group for three hours, listening intently as clerks described their problems keeping up with the workload after the recent staff cuts and answering their questions about the cuts and recent policy decisions. The discussion was frank.

Someone asked that the Court withdraw its bill to do away with the requirement for 99 clerks of court. Chief Justice Lavorato replied that although the Court has no plan for reducing the number of clerks, it was going to pursue the change. But he assured everyone that the reduction in the number of clerks of court, if any, would take place only after a thorough study in which clerks would participate. He added, "It's possible that after such a study the Court might decide to keep a clerk in each county."

When asked how an office could manage without a clerk there all the time, the Chief Justice answered, "It's being done now in several districts. Of course, we'll assess how well it's working in those areas before we decide whether or not to go in this direction statewide." He conceded, " It's tough to talk with you like this because it's possible that some of you would eventually take pay cuts. But we could use the savings to add more staff."

Some clerks were skeptical about the Court's decision to keep a clerk of court office in each county. One person asked what form the offices would take – would they be staffed and open at regular hours? Chief Justice Lavorato answered that the proposed consolidation plan was dead, and that the decision to keep an office in each county meant an office with regular hours and staff. "Despite the rumors going around, there is no plan to resurrect the consolidation idea," stated the Chief Justice.

Several clerks spoke out about the problems that have resulted from cutting supervisors. The people who were demoted are still doing the same work, but for less pay. There was a consensus that every office needs a supervisor on site all the time. One clerk urged the Chief Justice to look at the span of control issue immediately.

Another clerk voiced concern about immediate problems such as staff and clerks being too busy to take time off. Many agreed that huge problems would surface this summer when most people want take vacations. The Chief did not have an answer to this problem, but used the opportunity to emphasize that everyone needed to pull together now to avoid more budget cuts. He was referring to the additional $120 million shortfall in the state's budget for the current fiscal year. "I'm doing everything in my power to save the Judicial Branch from further cuts," said the Chief Justice. He urged the group to tell legislators about the potential consequences of further budget cuts.

When asked what the Court would do if the legislature imposed more cuts the Chief Justice responded, "We don't have a plan. We're going to wait and see what happens, but we'll do whatever we can to avoid more layoffs."

Several people asked if they would get their staff back when the state's fiscal outlook improved. Although he thought it might be possible to eventually add back staff, Chief Justice Lavorato made no guarantees. Later in the meeting he told the group, "Even if the state's revenues were to improve next year, the money we lost will not be restored right away; it will take many years to recover those funds."

One person expressed dismay that the budget cuts "came out of the blue." In response, Chief Justice Lavorato described the Court's decision-making process. He responded, "We had to act quickly because each day of delay meant deeper cuts and more layoffs." He pointed out that the cut to the clerk of court component was based upon a formula that was applied uniformly to all offices. However, his response did not appear to satisfy many clerks who felt they had suffered more than others had.

The discussion turned to the accuracy of the formula known as the Honsell formula. Most clerks agreed that the formula needs updating. "It's time for a new time study and review of the formula," the Chief Justice acknowledged.

Clerks told the Chief Justice their feelings of being dumped on by the legislature and others. They do not have the resources to do all that is demanded of them and mentioned particular problems with fine collections, mental health work, keeping statistics, searching the deferred judgment docket, reviewing orders, entering data in the domestic abuse registry, maintaining DHS records, and meeting short deadlines for sending notices. There was a consensus that the public has not noticed the consequences of the cuts; only the clerks and their staff are feeling the pain. Several clerks remarked about low morale among staff.

The clerks differ on how their offices are managing. Not everyone disagreed when the Chief Justice Lavorato said: "we're limping along but managing." But one frazzled clerk responded, "We're managing only because of the extraordinary efforts of clerks and their staff – it cannot last forever."

Legislative Report: The Funnel is a Good Thing

February 22 was a pivotal day. Not because it was George Washington's Birthday but because it was the first funnel of the legislative session. Bills that failed to be approved by a committee of the body in which they were filed, House or Senate, are no longer viable for consideration (except for appropriations, ways and means, and leadership bills). The following bills, which may be of interest to court personnel, survived the funnel. To view the text of the bill, visit www.legis.state.ia.us. (Note: If a bill is on the "Calendar" in either chamber, it is eligible for floor debate.)

House Files

HF 525- Mandatory Parole. Mandatory parole or work release period of no more than two years for individuals convicted of sex abuse, failure to register as sex offender, domestic abuse, or incest. House calendar.

HF 2060 - False Bomb Threats. Class "C" felony for threats to schools and certain other public buildings. House Calendar.

HF 2111 – Domestic Violence/Intimate Relationships. Expands definition of domestic abuse to include couples that are or have been dating. Sent to Governor.

HF 2153 – Victim Impact Statement in Court. Requires defendant to be present in court for victim impact statement. Passed House.

HF 2190 – Foreign Adoptions. House Calendar.

HF 2191 – Judges as Notaries. Passed House.

HF 2201 – Mandatory DNA Testing. Requires all felons to submit a specimen for DNA profiling. Passed House.

HF 2230 – OWI 3rd. Requires a mandatory minimum period of incarceration for a third or subsequent offense for imprisonment in the county jail. House Calendar.

HF 2278 – Zero Based Budgeting. Busy work for everyone. House Appropriations.

HF 2291 - City Judgment Liens. Allows a city to discharge a judgment lien against city owned real estate if the city files a bond for the judgment amount with the district clerk of court. Passed House.

HF 2298 - Stipulations in Civil Actions. Regulates entry of judgment in civil action based upon stipulation by parties. House Calendar.

HF 2338- Sex Offenders. Requires registration of sex offenders who are attending college, in county in which college is located. (See SF 2095.) Passed House.

HF 2339 – Supersedeas Bonds. Allows district court to waive supersedeas bond for state or local government entities. Limits amount of bonds in civil cases. (See also HF 2052). Passed House.

HF 2358 – Native American Child Welfare Act. Regulates the adoption of Native American children. House Calendar.

HF 2366 - Civil Process Servers. Authorizes sheriffs to appoint civil process servers. House Calendar.

HF 2395 - Child Support and Social Security. Changes medical support and the calculation method of child support if a child or parent receives social security payments. House Calendar.

HF 2399 – Foster Care Aging Out. House Calendar.

HF 2439 – Placement Screening for Delinquents. House Calendar.

HF 2466 - Child Custody. Joint physical care. House Calendar.

HF 2474 – Satellite Magistrate Offices. Reopens magistrate offices that were recently closed. House Calendar.

HF 2495 - No Contact Orders. Allows issuance of no contact orders to protect victims of 1, 2, and 3 sexual abuse and the family members. House Calendar.

HF 2398 - Sex Abuse Statute of Limitations. Eliminates the statute of limitations for these types of crimes. House Calendar.

HF 2501 - Child Support Modifications/ Juvenile Court Jurisdiction. Expands jurisdiction of juvenile court to include modifications of child support orders. (See also HF 2414 and SF 2226). House Calendar.

HF 2420 - No Contact Orders/Sex Offenders. Allows no contact order against an offender about to be released from jail, upon filing of an affidavit by victim or victim's family. House Calendar.

HSB 571 - CINA Evidence/Delinquency. Evidence of previous delinquency adjudication is admissible in a CINA case. House Calendar.

HSB 676 - Goat Identification.

HSB 672 - Trust Code Revisions. House Calendar.

Senate Files

HF 623 – Fines. Aggravated misdemeanors, class "C" or "D" felonies. Senate Calendar.

SF 2034 – Indictment or Information. Tolls filing period when defendant is out-of-state. Senate Calendar.

SF 2095 – Sex Offender Registry. Senate Calendar.

SF 2101 – Contempt Penalties. Increases maximum amount of penalties. Senate Calendar.

SF 2106 – Covenant Marriages. See for yourself. Senate Calendar.

SF 2139 - Victim Impact Statements. Requires oral victim impact statement in court in presence of defendant at victim's request. Court retains inherent authority to control trial. Passed Senate.

SF 2141 – Sheriffs/Civil Process Servers. (See HF 2366). Senate Calendar.

SF 2144 – OWI .08 BAC. (See HF 2040 and 2305). Senate Calendar.

SF 2146 – Terrorism. Penalties. Senate

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Legislative Report

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Calendar.
SF 2197 – Sex Offender Registration. Prohibits offender from residing near childcare facility. (See HF 2147). Senate Calendar.
SF 2198 – Tobacco Products. Penalties and regulations. Senate Calendar.
SF 2212 – Landlord Liens. Secured transactions and liens. Senate Calendar.
SF 2243 - Elected Clerks. Allows county supervisors to make the clerk of court an elective county office; the clerk and staff become county employees; and the county retains 50% of collected fines and fees. Senate Calendar.
SF 2267 - Judicial Districts. Requested by the judicial branch. Senate Calendar.
SF 2270 - Child Support/Social Security. (See HF 2395). Senate Calendar.
SSB 3011 - Public Defender Duties. Fee claims and other provisions. Senate Calendar.
SSB 3114 - Sentencing Reform. Felons who commit crimes against property receive a shorter sentence than felons who harm people. Class "A" felons not included. Senate Calendar.
SSB 3126 – Clerks of Court, judges, etc. This bill was requested by the judicial branch. Senate Calendar.
SSB 3141 - Sexual Predator Commitments. Transitional release, dual commitment, and other changes. Senate Calendar.
SSB 3153 - Trust Code revisions.

Vogel Named Co-Chair of Court Improvement Project

The Supreme Court announced the appointment of Court of Appeals Judge Gayle Nelson Vogel of Knoxville as co-chair of the Iowa Supreme Court Select Committee to Review State Court Practices in Child Welfare Matters (the Court Improvement Project). Judge Vogel succeeds Appeals Court Judge Terry L. Huitink of Ireton who served as co-chair together with First Judicial District Judge Stephen Clarke since the inception of the project in 1995.

Judge Vogel has been a leader of the efforts of the Supreme Court and the Court of Appeals to expedite the appeal process for cases of children in foster care. The efforts of Judge Vogel and her work group funded by the Court Improvement Project have produced new rules for appellate procedure in these cases recently approved and implemented by the Supreme Court.

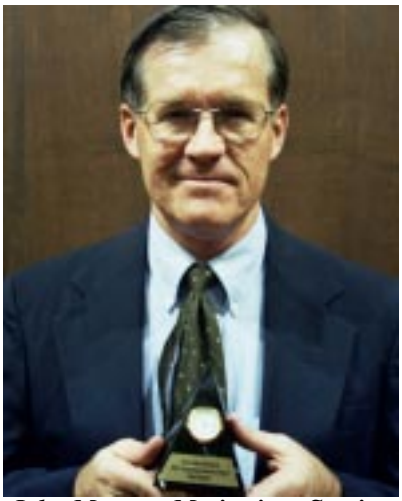
The primary goal of the Court Improvement Project is to improve trial and appellate court processes so that children in foster care may achieve the goal of safe, permanent homes without long stays in temporary foster homes. The project is funded by a federal grant through the Safe and Stable Families Act administered by the Children's Bureau of the Department of Health and Human Services.

Judge Gayle Nelson Vogel

Sixth District Awards

Amidst layoffs, staff shortages and rumors about furloughs, employees of the Sixth Judicial District had a little morale boost on February 18th as the district's Awards Committee hosted the third annual Employee Awards Ceremony. Realizing the importance of the awards ceremony to judicial branch employees, especially at a time when morale is so low, and after receiving word that the cost of the awards would no longer be paid from the district's budget, the district court judges, district associate judges in Linn County, the clerk of courts and managerial staff funded the awards out of their own pockets. In attendance were the award recipients, their families and friends, members of the awards committee, and staff from all of the district's courthouses. Chief Judge David Remley and Court Administrator Carroll Edmondson presided over the ceremonies.

In addition to the 6th District's five exemplary service awards that were presented, **John Monroe** was presented the Iowa Judicial Branch Award for Meritorious Service at the day's ceremony. John Monroe, the Judicial Hospitalization Referee for Linn County, was presented his



John Monroe, Meritorious Service

award by Judy Hartig, the patient advocate for Linn County. Hartig nominated Monroe because of his many years of dedicated and compassionate work with the mentally ill. He was also recognized for the many months he worked as referee without any compensation.

The Friend of the Court Award was given to the small claims mediators of Linn County. Awards were presented to **Don Whited, LeRoy Robbins, Carl Bauer, Mary Junge, Jean Seehusen, Marilyn Van Hoe, Ann Larson, Marjorie Henderson, Jerry Higgins, Roger Schreder, Dana Ehrhart, John Gales,** and **Luella Van Englehoven**. The small claims mediation project has been in existence for over seven years in Linn County and is staffed entirely by volunteers, most of who have been with the project since its inception. Statistics show that their successful mediation of cases represents the workload of one judge. Without the help of these volunteers, the existing judicial resources would be unable to handle Linn County's small claims caseload.

The Employee of the Year Award was given to **Kelly Vander Werff**, formerly of the Juvenile Court Office in Johnson County. Unfortunately for the Judicial Branch, Vander Werff was laid off in the last round of budget cuts. Vander Werff was recognized for her dedication and innovation in working with juveniles,

Kelly Vander Werff, Employee of the Year

particularly teen-aged girls. Among many accomplishments, she helped secure a federal grant that will provide funding for years to come for juveniles with substance abuse problems and started a mentoring program for teen-aged girls in Johnson County. Her smiling face, hard work, and innovations will be sorely missed.

The Teamwork Award was given to **Cassie Klein** of the Benton County Clerk of

Cassie Klein, Teamwork

Court's Office. Klein has worked in the clerk's office for over 14 years, but has never limited herself to only clerk functions. She was nominated and received the award for exemplifying the true spirit of teamwork. Klein not only works behind the scenes docketing and processing the endless flow of paperwork through the clerk's office, but she is on the front lines everyday, working with the public, judges, magistrates, county attorneys, law enforcement, juvenile probation, DHS, attorneys, court reporters, and litigants. Because of cutbacks, there are no court attendants in Benton County. So Klein, in addition to her clerk duties, also serves as court attendant when court is in session. She also is renowned for making sure that when court is in session, there is always

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Sixth District Awards

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popcorn, cookies and coffee available. Klein does all this with a smile on her face and an infectious enthusiasm. When their office was faced with cutbacks, her only response was that "we're all in this together, and if we work together as a team, the work will get done."

The Public Service Award was given to **Tammi Ollinger** of the Johnson County

Tammi Ollinger, Public Service

Clerk's Office. Ollinger is the jury manager for Johnson County and has been with the clerk's office for nearly twenty years. Ollinger was recognized for her dedication to improving jurors' service in Johnson County. She was instrumental in implementing the new computer system that selects and notifies jurors, Johnson County's one day/one trial system, and for treating the public and prospective jurors with respect and patience. Her hard work has greatly improved juror service in Johnson County.

The Distinguished Service Award was given to **Jane Sweaney,** who has worked in court administration for 23 years. Sweaney, with great diplomacy and aplomb, works with the court administrator and administrative judge to assure that cases flow through the court system in an

Jane Sweaney, Distinguished Service

efficient manner, assigns judges to the various counties, is the ADA coordinator for the district, hires and supervises the court attendants and schedules cases. She was recognized not only for her many years of hard work, but for her even temper and sense of humor in dealing with the public and court staff. In accepting her award, she demonstrated her great sense of humor in saying that what she like best about her job was "telling judges where to go".

Dedicated Service Awards were given to **Caroline Bertling, Charity Madren, Angela Pritchard, Sharon Modracek** (of the Linn County Clerk's Office) and **Sandra Dains**, (Court Administration in Johnson County) for 25 years of service; to **James Blecha** (Johnson County Juvenile Court Office), **Sandra Bine** (Iowa County Clerk's Office, retired), **Timothy Zweiner** and **Harry Frantz** (Johnson County Clerk's Office), **Teri Stephen Meeks** and **Joan Ondler** (Linn County Clerk's Office) and **District Judge William Thomas** for 20 years of service; to **Laura Gearhart** (Linn County Juvenile Court Office), **Donald Stamy** and **Bill Long** (Linn County Court Attendants), **Marge Morgan** (Linn County Judicial Assistant), **Vickie Rebelsky** (Johnson County Clerk's Office) and **Dorothy Klosterbuer** (Law Clerk) for 10 years of service.

Friend of the Court, Small Claims Mediators left to right: Ann Larson, Carl Bauer, Jean Seehusen, LeRoy Robbins, Marjorie Henderson, Roger Schreder, Dana Ehrhart, John Gales, Jerry Higgins.

The Impact of the Family Mediation Program in the Sixth Judicial District

by Annie Huntington Tucker

In August, 2001, the Family Mediation Program celebrated its fifth anniversary. What the 6th District has learned might be of use to judges and court staff in areas of the state where mediation of family law cases is not as common. Some background on the program and how it works will provide a context for understanding our findings. In the past five years, over 1300 divorce and custody cases have been mediated, less than 10% of the dissolutions filed during that time. 82% of the cases mediated YTD 2001 were court-ordered, the remaining 18% were voluntary. 85% of the reporting parties have indicated they were satisfied with their mediator. Over 73% of the cases have reached agreement on some or all issues YTD 2001.

How the Program Works

The program objectives include:

- to encourage parties to make their own decisions on issues that will affect their lives and those of their children;
- to encourage parties to develop the type of working relationship they will need to co-parent their children effectively after the final decree;
- to reduce the trauma endured by children affected by family law cases;
- to increase the parties' satisfaction and compliance with final decrees;
- to reduce the burden of the family law caseload on the court; and
- to reduce the time required to process family law cases.

To accomplish these program objectives, the program promotes the awareness and use of mediation in family law cases by:

1. **Mediation Education Class.** All parties in dissolution or custody-related cases are required to attend a free, 30-minute Mediation Education Class that explains mediation and is offered in all "Children in the Middle" classes in the district, for the convenience of parties with minor children.
2. **Some cases are required to mediate.** In cases that request a court decision, either on temporary custody or visitation issues or on issues remaining after the pre-trial conference in dissolution or modification cases, the parties are required to participate in an initial mediation session to determine whether they want to use mediation to make their own decisions.
3. **Program brochure on mediation.** Both parties in all dissolution and custody cases receive a program brochure explaining mediation with the initial materials they receive from the court. If you would like a copy of the brochure, please contact Carroll Edmondson.
4. **Roster of qualified family mediators.** The program maintains a roster of mediators that meet the statewide requirements, which is available to parties and attorneys.
5. **Court orders in simple and informative language, for parties' benefit.**
6. **Continuing education for mediators and attorneys**.
7. **A database for tracking and analyzing the impact of mediation is maintained.**

Parties may choose to mediate voluntarily at any point. Either party can terminate mediation at any time. They select their own mediator and can use anyone they both accept. Program materials encourage parties to consult their attorneys. Parties are not required to reach agreement and do not sign agreements in mediation. Low-income parties can apply for pro-bono mediation, which roster mediators provide.

Mediation may be inappropriate or unsafe in some situations. Therefore, it is essential that both parties are screened separately for domestic violence before the parties come together for mediation, to determine whether mediation is actually appropriate. The court doesn't do this; mediators and attorneys must. At the request of our Mediation Oversight Committee, chaired by Judge William L. Thomas, Jennifer Juhler chaired a committee which designed a new continuing education curriculum for roster mediators on mediation and domestic violence. It is comparable to such courses in other states.

Mediation Saves Judicial Branch Time and Money

Mediation does not replace judges, because judges must always review and accept or reject a mediated agreement. However, mediation saves judges time, allowing them to attend to other civil and criminal litigation in a more timely way.

In November, 2000, Iowa legislators from the Sixth District requested that we quantify benefits to the court in terms of court staff salaries. That information is included here.

Fewer hearings on temporary custody and visitation. Since the program started, the number of hearings on temporary custody and visitation issues has dropped dramatically. For example, before the program, staff used to schedule 16-20 hearings per week on temporary custody and visitation in Linn County. Now we schedule an average of 6 per week, a reduction of over 60%. Based on an average of 15-30 minutes per temporary hearing, this currently saves 6 hours of district court judge time per week.

Shorter trials. In Linn County, the number of days per trial has dropped significantly since the implementation of the program. Before the program, at least 25% of the trials were 3-5 days. Now, more than 85% of the trials last from 1 hour to 2 days. Only 15% are longer.

Why has this happened? Parties who reach agreement on some issues in

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Family Mediation

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mediation bring only the remaining issues to court for a decision.

What does that mean in terms of judge time? In 2000, there were 250 contested dissolution trials in the Sixth District. Dee Gross, Case Coordinator II, estimates that the shorter trials saved 23 court days last year. There are 226 court days per year (taking into consideration holidays, ruling days, weekends, and judicial conferences). Dee says that **mediation saved the court 10% of a district court judge's time,** last year.

Fewer modification trials in mediated cases. To determine whether mediation was having an effect on re-litigation rates on custody and visitation issues, we surveyed:
1) 50 cases where parties stipulated an agreement on custody and visitation without going to mediation,
2) 50 cases where parties mediated an agreement on custody and visitation issues, and
3) 50 cases where the court decided on issues of custody and visitation.
The modification, or re-litigation, rate was lowest in the mediated sample:

- 11/50 mediated cases filed for a modification
- 19/50 stipulated cases filed for a modification
- 13/50 court-decided cases filed for a modification.

Most importantly, the number of modification trials was far lower in cases that originally mediated:

- 1/50 of the modifications where parties originally mediated went to trial.
- 8/50 of the modifications where parties originally stipulated went to trial.
- 7/50 of the modifications where court originally decided went to trial.

Fewer appeals. Dissolution cases that were originally decided in court were four times more likely to be filed.

Less paperwork. With the mediation program, district court judges report that they have less paperwork associated with dissolution and custody cases due to clerical and scheduling support provided by the court staff.

Possible Policy Change: The Timing of Mediation

This program has not yet analyzed the impact of the timing of mediation. However, the State Justice Institute recently funded a study of two Virginia mediation programs and the timing of mediation. The study is titled "Timing is Everything." It concluded that "Getting litigants to the mediation table as quickly as possible results in… (reducing the) number of hearings and mediation sessions per case, results in a greater percentage of cases successfully completing mediation in a shorter amount of time, and increases the likelihood of a successful mediation outcome."[1] [In this case, 'successful mediation outcome' indicates that the parties reached resolution.]
The Mediation Oversight Committee is considering this study and its implications for this program.

(No) Funding: A Dilemma

In past years the Iowa Supreme Court has set aside $100,000 of the Court Technology Fund for ADR, which was distributed via grants to mediation programs and centers throughout the state. This year the Court notified grant applicants in late November that those funds would instead be used to help with the budget crunch.

According to Iowa legislators, funding for mediation programs will only be considered as part of an existing budget. A stand-alone proposal solely to support mediation would not be considered. Although mediation has benefited the courts significantly, in time and money, the Judicial Branch is not in a position to include those programs in its budget. In addition, due to staff cuts, it is difficult to ask current court staff to take over tasks related to the mediation programs.

Mediation will continue. We need to assure the benefits and control the risks. For example, we need to assure that parties in domestic abuse cases are screened. We should require mediators statewide to take the course in domestic violence and mediation.

The benefits are clear. The need to provide leadership to prevent the risks is also clear. The way to finance them is not.

The Sixth Judicial District Family Mediation Program will continue to track the impact of mediation and report to the courts. If you have any questions about how the program works or the impact of mediation, please contact the program director, District Court Administrator Carroll Edmondson or Mediation Oversight Committee Chair Judge William L. Thomas.

[1] Judge George C. Fairbanks, IV, and Iris C. Street. "Timing is Everything. The Appropriate Timing of Case Referrals to Mediation: A Comparative Study of Two Courts." State Justice Institute., 2001, p. 7.

Annie Huntington Tucker

Annie is the Director of the Sixth Judicial District Family Mediation Program and the Johnson County Small Claims Court Mediation Program. She is a mediator in divorce and custody, employer-employee, small claims, civil rights, and victim-offender cases. She is a mediation and conflict resolution trainer. She has a Masters in Conflict Resolution from Antioch University.

Electronic Public Access Service a Big Hit With Public – A Little Too Big

On January 30, the Judicial Branch started its new online service to ICIS. The service was immediately popular, averaging 2000-3000 hits per hour. But its popularity created a headache for state officials during the first week of operation. The demand for the site exceeded its server capacity and resulted in access problems for many users. However, the problem appears to have been fixed with the help of an additional server.

"The site was crippled the first week by the high volume," said Larry Murphy, Director of Information Technology for the Judicial Branch. "We estimated our server capacity based upon the online experience of the Wisconsin and Missouri court systems. The demand for our site has been twice that."

The site is hosted by the state's Information Technology Department, which supports the server. The high demand for court records created problems for state agencies that were using the same server for their online services. To remedy the problem, the department brought in another server. However, the Judicial Branch has ordered two additional servers for the project to ensure its smooth operation. Funds earmarked for future program enhancements were used to purchase the new servers.

The site enables access to the court docket. Currently, a user can find out basic case information such as the names and birth dates of litigants, their attorneys, case titles and numbers, criminal charges, case events, and disposition information and financial data. More features will be added later this year: online fine payment and a subscriber service for people who want more details about cases.

"We'll add the enhancements after we're satisfied with the system's performance, said Larry Murphy.

Online Access to Deferred Judgment Docket. Later this year, the Judicial Branch will have direct online access for authorized users to the state's deferred judgment docket. Judges and county attorneys will be able to check for deferred judgments from their own PCs, rather than having the clerk of court do the search.

New Faces

District 1: **Cindy Jestrab,** *Cresco,* Judicial Clerk..

District 3: **David Saxton,** *Emmetsburg,* Judicial Clerk.

District 8: **Michael Mullins,** *Washington,* District Court Judge, **Benny Waggoner,** *Fairfield,* Magistrate, **Brook Davis,** *Oskaloosa,* Court Reporter.

Milestones: Service Anniversaries

25 Years

Cynthia Kelly, Clerk of Court, *Emmet County.*

Beverly Hammes, Clerk of Court, *Keokuk County.*

Carl Christianson, Clerk of Court, *Allamakee County.*

Marilyn Fluckey, Clerk of Court , *Clarke County.*

Dan Watson, Juvenile Court Officer, *Woodbury County.*

Leona Lightner, Trial Court Supervisor, *Scott County.*

Sara Uetz, Judicial Clerk, *Winnebago County.*

Mary Sexton, Clerk of Court, *Mahaska County.*

Rebecca Oberhauser, Judicial Clerk, *Linn County.*

30 Years

Karen Arringdale, Court Reporter, *Scott County.*

James Leidigh, Juvenile Court Officer, *Linn County.*

Jane Hussey, Clerk of Court, *Clay County.*

Iowa Court Reporters Hear from Realtime Expert

By Brenda Ellefson

Mark Kislingbury was the guest speaker at the midyear seminar of the Iowa Court Reporters held January 19. Mark is the 2001 speed contest and realtime contest winner. He is employed as a captioner in Houston, Texas and currently captions the Rush Limbaugh show, among others. Mark, an energetic and entertaining speaker, shared his secrets of realtime success.

Mark stressed that his realtime theory is one that is easily adaptable to any reporter's theory. An individual reporter's theory only needs to be modified enough so words that are spelled differently are written differently. Removing conflicts is important when you begin writing realtime, and the way to remove conflicts is to resolve them now. Mark had a suggestion to aid in remembering your resolution of a conflict. If the conflict is misstroked through an entire transcript, make the correction manually each time it appears, instead of using a global job entry. While this suggestion struck terror in the hearts of many, it is an effective learning tool.

Mark has 16 rules for use in becoming a better realtime reporter. Rule number seven is "always keep a notebook near you to write down words that need to be added to your dictionary." As Mark was realtiming a heated discussion at the NCRA business meeting, a speaker used the word "tsunami." Because he follows this rule, Mark had the word "tsunami" in his dictionary and it came up correctly on the "big screen."

Mark attributes his success to having a good dictionary and also speed. According to Mark, realtime skill is 50 percent speed and 50 percent the strength of your dictionary theory. When Mark practiced for the speed contest, he practiced at 400 words per minute. He played a literary selection at this speed. Alvin and the Chipmunks would have a difficult time maintaining that speed!

Mark's book, *My System, The Road to Realtime Excellence*, fully explains his system and is available from NCRA. The handouts were not available at the time of the seminar. Anyone who attended the seminar and would like one should e-mail Jody Malloy at jmalloy@tdsi.net.

Iowa Courts Rank High in National Survey

Iowa is rated as one the top five states at doing the best job overall at creating a fair and reasonable litigation environment according to a recent national survey conducted for the United States Chamber of Commerce. The survey assessed the tort liability systems of all 50 states as perceived by senior corporate attorneys. The other top states included Delaware, Virginia, Washington and Kansas. The states perceived as doing a poor job overall are Mississippi, West Virginia, Alabama, Louisiana and Texas.

States were also ranked according to key elements. Iowa ranked high in the following categories:

- Treatment of class actions.
- Timeliness of summary judgment/ dismissal.
- Judges' impartiality.
- Judges' competence.

Harris Interactive conducted the survey in late 2001. The interviews were conducted by telephone among a sample of in-house general counsel or other senior counsel at public companies with annual revenues of at least $100 million. Of the 824 respondents, 86 were from insurance companies. A complete report is available.

3rd District Juvenile Court Services

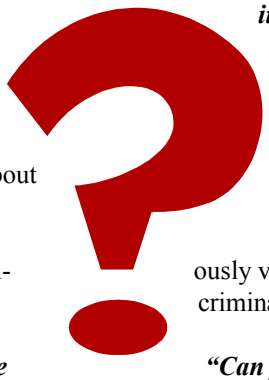
The Third Judicial District's Juvenile Court Services Department (pictured) recently paused for staff pictures courtesy of Jon Nylen and Leesa McNeil. This group, as most know, could not look this good absent Jon and Leesa's photographic skills. When "the 3rd" is not posing for pictures they have been actively involved in many projects including their well-known drug court, new disposition reports and an assessment center funded through a Safe Schools grant.

Pictured left to right front row: Jon Nylen, Patty Redmond, Paula Jochum, Dan Watson, Lisa Bockholt, Dave Schmiedt, Stephan Pearson, Dick Edwards

Pictured left to right back row: Lynn Watson, Gary Schoorman, Amra Dillard, Sandy Cullenward, Sarah Kovarna, Sherri Strom, Annette Peterson, Gary Niles, Shelly Martfeld, Martin Appelt, Don Mathews

How could I find out if my ex-wife has divorced me?

Last June, the Judicial Branch website added a feature, which enables users to send e-mail messages if they have questions about the site or need technical assistance. The site has averaged about 100 questions a month, but most of the questions are not about the site. People ask us all sorts of questions, and of course a few just want to vent. Most court employees and judges are probably used to having people ask them questions about "the law." Here's a sample of e-mails we have received in the past year.



A few people want to complain about the website. For example, this person does not like the new service making court records available online.

"I just want to thank whoever the mastermind is behind this brilliant idea of airing everyone's dirty laundry to the general public and making it so convenient for the scum bags of America to see it from work or home." (The "scumbags" were the writer's co-workers and friends of the writer's children.)

This person seemed a little too defensive.

"I think it is imperative that under your "Domestic Abuse" section, that you please use the term "alleged" abuser, instead of just abuser, because I know for a fact that in many cases, the victim had not really been abused. It is unfortunate that in many cases, the victim has not really been abused. It is unfortunate that in our country, which was once a great land of freedom, where someone was presumed innocent until found guilty now is presumed guilty until proven innocent."

We get a fair number of questions about small claims court. For instance:

"I sent a $350 money order to a person in Goose Lake, Iowa for an item he had for sale on Ebay. What procedure must I follow to take him to small claims court to recover my money? I have been unable to contact him for over a month."

"I ordered a drum set from a man in Muscatine, Iowa back in late December. He said it would send it to me in 4 to 6 weeks. It is now June and I haven't seen it yet and he has neglected to reply to any of my recent e-mails. I live in Washington State and it is worth it to me to fly there to have justice served."

The court system is obviously viewed as a catchall for criminals and their problems.

"Can you please help me to find the number for a bails bonds man there in Council Bluffs?"

"I served on a jury a year or so ago. What was the result of criminal case 99-238 in federal court in Des Moines? Last I knew the guy skipped. Did they ever catch him?"

"I am looking for a person who I believe may now be in police custody, how can I find out if your state has him, and what happened to our car that he was driving?"

"Is it possible to find out which prison someone is at in Iowa, or is that private information?"

"I understand you have picked up my brother on an arrest warrant from Minnesota. His family is looking for any and all information you can give us on his arrest. Has he offended in Iowa, or was he picked up because of his fugitive status with the state of Minnesota?"

This message was intriguing.

"I just have a question on how I could look up a criminal record check on someone from Polk County that is incarcerated at the present time. I have been corresponding with this person and just want to be sure that what they told me they are incarcerated for is the whole truth as after their release we may meet in person and I am a single dad and want to look out for the safety of them and myself."

By far, the most questions we receive are about child support – people want to stop paying, or pay less, or they want to be paid more.

"I was notified that I had a child who was fifteen years old. I paid the child support and now he's eighteen years old. I just got a letter from CSRU saying that I will have to pay child support again. I thought that I was done with it all. Can they charge me for child support before I was even notified that he was my child? Keep in mind that when he was only a few months old, I asked if he was mine and I was told no."

"I need to have my child support payment adjusted. I make about $5.15 an hour 16 hours a week. I just need a little time to find a better job or second job so that I have enough money to survive on. I just need some advice on how I would go about doing this."

We think the following two mistook us for the Montel Williams website.

"Would you please tell me how I could find out if my ex-wife has divorced me? She left me four years ago, and moved to Iowa, and I live in Wilmington, Delaware."

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"Trying to get information for my daughter. She moved from Iowa in 1996 and hopes her husband has filed for divorce. She would like to remarry."

Often we get questions for the Attorney General Tom Miller. Take this one for example:

"Would you please forward this email to Iowa's Attorney General? As a consumer I want my OS uncluttered with Bill Gates' choices for me."

Many people seem to think that we exist to provide free legal information.

"***I am an ordained and licensed clergy from New Braunfels, Texas. My niece is wanting me to perform her wedding ceremony. I was wondering how this was handled up that way. Do I have to register at your office to be able to perform the ceremony? If so, what sort of paperwork would I need to have and if I need to have it, could I have it mailed to me here, in Texas, fill it out and mail it back? Would there be a cost in registering with the State of Iowa, if there has to be a registration."***

"Can you tell me a little about Iowa's Fence Law?"

"I am a landlord of a property and am wondering if I can evict a tenant for false information provided on her rental application form."

"My mother-in-law asked me to find out the Iowa Legal law on late fees pertaining to credit cards. She's on a fixed income and widowed, and feels she's being taken advantage of."

"I need to know what the Iowa law is regarding taping of telephone conversation."

We have a section on the website for job opportunities, but we could not help this person.

"I am a college student studying Criminal Justice and I recently saw a program on the learning channel about bounty hunters. According to the program, Iowa allows bounty hunter but they have to have a permit from the state. How could I get information on this subject as a possible career?"

We thought this was a good question. One could simply change the date and the question would apply to a wide range of actions.

"I would like to know what circumstance caused the Iowa Supreme Court to act the way they did on May 23, 2001."

There are always a few people who have no idea where to turn so they turn to us. For instance:

"How can I check on a company called Pyramid Insurance to see if their supplementary insurance is for real? My mother is on Medicare and just purchased this for a supplemental insurance and I can't find any information on the company."

"I need the regulation agency responsible of overseeing the Collection Agencies, and where to file a complaint."

Some people just don't have a clue, such as this person:

"I want to find out about a judgment that I have against me. I want to find out who it is and how I pay it off."

This last one takes the cake.

"I would like to know why the smokers in Iowa were not given some of the Tobacco settlement money that the state received. If it wasn't for us stupid smokers, the state of Iowa would not have received any money from the tobacco giants. I suffer everyday from COPD (Chronic Obstructive Pulmonary Disease) from years of smoking. The least this state could do for me is inform me of a list of lawyers who would be willing to take my case to court; after all they have destroyed my health."

Recent Iowa Criminal Decisions

By Ann E. Brenden

Ann Brenden, Assistant Attorney General, is the Editor of the *Iowa Criminal Law* Handbook (2d ed. 1994). Ann's synopses of the cases are also contained on the Iowa County Attorney Association's web site. They can be searched both chronologically and by subject at www.iowa-icaa.com

October 2001

In Re Detention of Ewoldt, 634 N.W.2d 622 (Sup. Ct. No. 00-792) (Iowa 10/10/2001). ***Sexually violent predator statute***. [1] Iowa Code chapter 229A does not require a showing that respondent lacked complete volitional control over his predatory behavior or that he was more likely than not to reoffend within one year. [2] Chapter 229A is civil in nature and does not violate due process, double jeopardy, or ex post facto protections.

State v. Iowa District Court for Warren County, 634 N.W.2d 619 (Sup. Ct. No. 00-523) (Iowa 10/10/2001). ***Sentencing: Reconsideration where mandatory minimum applies***. As used in section 902.4 prohibiting reconsideration where a mandatory minimum sentence is imposed, the reference to a minimum sentence of confinement means convictions for which imprisonment was mandatory and no other legal sentence was available. As such, reconsideration is appropriate where a mandatory minimum is ordered, if other legal options were available. In addition, if probation is revoked and a new sentence of confinement is imposed, that sentence is subject to the one-third minimum sentence provided in section 124.413, unless the court makes a finding of mitigating circumstances on the record.

State v. Heard, 636 N.W.2d 227 (Sup. Ct. No. 00-106) (October 10, 2001). ***[1] Second*-degree *robbery, assault alternative: sufficiency of "assault" evidence.*** Sufficient evidence existed to support the "assault" element of 2nd- degree robbery where defendant entered a convenience store with a brown bag over his head and socks on his hands, demanded money from the lone clerk while in close proximity to her, took the money, told the clerk to lie down, and then left. A perpetrator's disguised appearance can give rise to an assault. The totality of these facts provided the fact finder with a basis for inferring that defendant's actions—verbal and nonverbal—were intended to place the clerk in fear of immediate physical contact that would be painful, injurious or offensive***. [2] Simple assault [708.1(2)] a specific intent crime***. Iowa code section 708.1(2) states that to constitute an assault, an act must be intended to place another in fear of immediate physical contact which will be painful, injurious, insulting or offensive, coupled with the apparent ability to execute the act. The court now holds that the assault alternative in section 708.1(2) is a specific-intent crime, overruling *State v. Ogan,* 487 N.W.2d 902, 903 (Iowa 1993), and all other cases that hold otherwise.

State v. Owens, 635 N.W.2d 478 (Sup. Ct. No. 00-1030) (Iowa 10/10/2001). ***[1] Ineffective assistance: failure to sever.*** Trial counsel was not ineffective in failing to file a motion to sever trial on felon in possession of a firearm charges from trial on the drug charges. Defendant did not meet the necessary showing of prejudice to require severance, in balancing his right to a fair trial with the State's interest in judicial efficiency**. [2] *Ineffective assistance: failure to seek interrogatory.*** Counsel was not ineffective in failing to seek a separate interrogatory regarding gun possession, without mentioning the felony status to which he had stipulated, instead of submitting the marshalling instruction and verdict form requiring a finding of guilt beyond a reasonable doubt on every element. "When a prior conviction forms an essential element of the current charge, rather than merely furnishing the basis for an enhanced sentence, the jury must determine guilt on that element beyond a reasonable doubt; answering an interrogatory will not suffice. Even if the defendant stipulates to guilt on an element of an offense, the court must

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still instruct the jury as to the stipulation. To the extent *State v. Smith*, 576 N.W.2d 634, 637 (Iowa Ct. App. 1998), holds to the contrary, we overrule it." ***[3] Incorrect drug and habitual offender sentencing: reversed for adjustment increase.*** Court should have sentenced defendant as follows: fifteen years as an habitual offender (902.9(3)—15 years), subject then to being doubled by operation of enhancement for possession of weapon under 124.401(1)(e); subject then to being tripled based on prior conviction for drug tax stamp violations by operation of 124.411**.**

State v. Snyder, 634 N.W.2d 613 (Sup. Ct. No. 00-1339) (Iowa 10/10/2001). ***Driving while barred—snowmobiles.*** The driving while barred statute, Iowa Code section 321.561, includes snowmobiles so as to bar the operation of a snowmobile on the public roadway while one's license is revoked under the habitual offender provisions.

State v. Walshire, 634 N.W.2d 625 (Sup. Ct. No. 00-1298) (Iowa 10/10/2001). ***Warrantless stop: anonymous tip as basis***. An anonymous tip of suspected drunk driver, (by a witness driver following the suspect's car, calling from a cell phone but not giving his or her name) based on tipster's observation that suspect was driving on the median and identifying suspect's car by license plate, make and model of car, and location of the event, provided reasonable suspicion to stop the defendant even though the stopping officers did not personally observe any behavior generating reasonable suspicion for the stop. Unlike *Florida v. J.L.,* 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000), wherein an anonymous tip was not sufficient to justify a stop to pat down someone alleged to be carrying a gun, ***(1) the informant revealed the basis for his knowledge and it did not concern concealed criminal activity—he was observing a crime in progress, open to public view; (2) a serious public hazard allegedly existed that might call for a relaxed threshold of reliability;*** and (***3) the intrusion on privacy interests is slight***.

Note: The Court held that the anonymous call came from a citizen informant, "defined as one who is a witness to or a victim of a crime." As such, the information imparted is subject to the rebuttable presumption of being generally reliable.

November 2001

State v. Anderson. 636 N.W.2d 26 (Sup. Ct. No. 00-1081) (Iowa 11/15/2001). ***[1] Evidence—marital privilege.*** The marital privilege exception regarding child abuse cases (Iowa Code section 232.74) is limited to cases of child abuse that result from acts or omissions of a care provider. It does not apply to injuries to children that result from acts or omissions by a non-care provider. (reversed on this ground as the court "cannot conclude beyond a reasonable doubt the guilty verdict was unattributable to the evidence admitted in violation of the marital privilege.") ***[2] Lesser included offenses—sexual abuse third.*** Neither assault nor assault with intent to inflict sexual abuse are lesser included offenses of sex abuse 3rd under the statutory rape version, as the latter does not include an element of "by force" or "against the will".

State v. Emery 636 N.W.2d 116 (Sup. Ct. No. 99-1957) (Iowa 11/15/2001). ***[1] Subject matter jurisdiction of district court over non-waived juvenile proceedings.*** Iowa Code sections 232.8 and 232.45 address the authority of the district court to adjudicate charges of delinquent acts, not its subject matter jurisdiction over such cases. Consequently, any failure to comply with the transfer procedure merely affects the authority of the district court to hear the case, which can be waived, as happened here when the defendant failed to object to the district court's adjudication of his case. ***[2] Juveniles—application of mandatory minimums.*** Nothing in Iowa Code section 232.8(1)(c) suggests that juveniles who commit one of the specified drug offenses and are prosecuted as adults are to be sentenced any differently than similarly situated adults. ***[3] Juveniles—exemption from mandatory minimum.*** The section 232.45(14) exemption from the mandatory minimum sentence does not apply where a juvenile's drug offense was excluded from the juvenile court's jurisdiction and consequently was never filed in juvenile court; so that defendant was not waived to district court for prosecution within the meaning of section 232.45(14). ***[4] Equal protection—juveniles transferred vs. those not transferred***. The different treatment of juveniles transferred to district court and juveniles excluded from juvenile court jurisdiction does not violate the Equal Protection Clause.

State v. Jose 636 N.W.2d 38 (Sup. Ct. No. 00-760) (Iowa 11/15/2001). ***[1] Sentencing—reliance on unproven charges.*** Sentencing court's reference to "additional crimes" fell far short of showing inappropriate reliance on unproven charges, appearing instead to reference defendant's prior convictions. ***[2] Restitution—challenge to supplemental orders entered more than 30 days after sentencing.*** Defendant who seeks to appeal supplemental restitution orders after the date for appealing the original sentence has passed, but whose restitution plan was not complete at the time of appeal, can file a petition to modify the supplemental restitution orders during the appeal, to be determined by the district court as a matter collateral to appeal. In that event, defendant is entitled to court-appointed counsel.

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State v. Kolbet _ N.W.2d ___ (Sup. Ct. No. 99-46) (Iowa 11/15/2001). ***[1] Evidence—use of false testimony—standards.*** The prosecution's knowing use of false testimony requires a conviction be reversed if there is any reasonable likelihood the false testimony could have affected the judgment of the jury. Further, the prosecutor need not have actually known the testimony was false, if he or she "should" have known. ***[2] Use of false testimony of rebuttal witness found.*** The State's use of rebuttal testimony, found in post-trial motion to be expressly contradicted by the materials on which the witness relied constituted a reckless disregard for the truth. Court also found a strong likelihood that the testimony could have affected the verdict and reversed on that ground. ***[3] Evidence—reliability for jury.*** The reliability of trained trooper's speed estimates was a question for the jury. ***[4] Statutes—single subject constitutional challenge.*** Constitutional challenge under "single subject" clause is untimely if not urged before the act is codified. ***[5] Equal protection.*** Section 707.6A does not violate equal protection guarantees. ***[6] Homicide or serious injury by vehicle—due process challenges.*** Section 707.6A contains a mens rea element—willful or wanton disregard for the safety of others— so as not to violate the Due Process Clause; additionally, a cause-in-fact requirement is clearly spelled out as an element of the offense. ***[7] Implied consent—reasonable cause.*** The investigating officers did not lack reasonable cause to invoke the implied-consent provisions of section 321J.6. ***[8] Motion to suppress—procurement of defendant's blood.*** The court did not err in denying the defendant's motion to suppress on the basis that his consent to the taking of his blood was invalidly obtained. ***[9] Evidence handling.*** The court is unable to conclude that the manner in which the blood sample was handled tainted the results. ***[10] Jury's knowledge of possible penalties—no abuse of discretion.*** The court was well within its discretion to keep information regarding the possible penalties from the jury. ***[11] Defense witness list—error in requiring.*** The court erred in requiring defendant to submit a list of his witnesses to the prosecution for aid in voir dire. ***[12] Jury view of crime scene.*** The court did not abuse its discretion in refusing to permit the jury to view the car or the crime scene. ***[13] Recusal—no abuse of discretion in determining unnecessary.*** Record did not support finding of abuse of discretion in the determination that recusal was not necessary because judge had experienced family loss at the hands of a drunk driver.

State v. Konchalski, 636 N.W.2d 1 (Sup. Ct. No. 00-1394) (Iowa 11/15/2001). ***[1] Restitution—due process challenge to section 910.3B award.*** Neither substantive nor procedural due process challenge existed for defendant's section 910.3B ($150,000) restitutionary order. ***[2] Restitution—excessive fines.*** Section 910.3B restitution statute does not impose an excessive fine in voluntary manslaughter cases.

State v. Kress, 636 N.W.2d 12 (Sup. Ct. No. 00-1173) (Iowa 11/15/2001). ***[1] Mandatory minimum for obtaining controlled substances by forgery (section 155A.24).*** One-third mandatory minimum sentencing provisions apply to violations of section 155A.24 by virtue of its ties to section 124.413 and in turn 124.401. ***[2] Drug provision properly categorized as a sentencing provision, not limitation on parole.*** The court concludes that section 124.413 is a sentencing provision and overrules *Kinnersley v. State*, 494 N.W.2d 698 (Iowa 1993), *Luter v. State*, 343 N.W.2d 490 (Iowa 1984), and *State v. Morehouse*, 316 N.W.2d 884 (Iowa 1982), to the extent they hold otherwise. ***[3] Ineffective assistance of counsel***. Counsel was ineffective in failing to either correct the court's misinformation about the mandatory minimum sentencing provisions or to file a motion in arrest of judgment raising the issue, resulting in prejudice to the defendant.

State v. Metz, 636 N.W.2d 94 (Sup. Ct. No. 99-1790) (Iowa 11/15/2001). ***[1] State's use of post-Miranda statements for impeachment during trial.*** A defendant who remains silent after being Mirandized cannot be impeached by that silence when he testifies at trial. *Doyle v. Ohio*, 426 U.S. 610 (1976). However, if defendant talks (after receiving the warning) about his role in the offense, or offers an exculpatory story or alibi, *Bass v. Nix*, 909 F.2d 297 (8th Cir. 1990), he can be impeached with that prior inconsistent statement if he testifies otherwise at trial. *Anderson v. Charles*, 447 U.S. 404 (1980). Here, cross-examination of defendant about not having told his trial version to police when he spoke with them after his arrest required reversal because (1) the alleged inconsistent statement was never offered in evidence, negating the claim that the challenged cross-examination was part of an effort to impeach defendant by the prior inconsistent statement, and (2) the alleged prior inconsistent statement was "noticeably lacking in any comment by defendant on how [the victim's] death occurred or defendant's role in it." The error was not harmless as a constitutional violation under the standard of *Chapman v. California*, 386 U.S 18 (1967). ***[2] No error in failing to give mistake-of-fact instruction.*** Defendant's claim that, had he known who his alleged attacker was he would not have killed him, did not entitle him to a mistake-of-fact instruction given what the jury did find, in convicting him of first-degree murder. ***[3] Hearsay testimony—defendant's admission to since-deceased person.*** DCI officer testimony that pawn shop employee, who was deceased at the time of trial, quoted

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defendant as making inculpatory statements was inadmissible hearsay: because other similar statements were available to the state, "the residual hearsay rule should [have been] invoked in the absence of a far greater need than that which was shown to exist." ***[4] Murder photos.*** No abuse of discretion in admitting photos of decedent's body.

State v. Naujoks, 637 N.W.2d 101 (Sup. Ct. No. 00-1149) (Iowa 11/15/2001). ***[1] Warrantless search of overnight guest in apartment.*** Overnight guest in an apartment has a legitimate expectation of privacy. Although probable cause existed, the warrantless search was illegal in the absence of absent exigent circumstances; here, the circumstances did not present any objective indication of fear or violence or jeopardy, nor was there any evidence of risk of escape, nor was hot pursuit or potential destruction of evidence involved. Case is remanded for new trial to remedy trial court's denial of motion to suppress. ***[2] Tainted search warrant—effect.*** Search warrant that is later found to be based on tainted information (obtained from prior unlawful search) must be examined to determine if untainted information is sufficient, as here, to establish probable cause. ***[3] Nunc pro tunc order and double jeopardy.*** Nunc pro tunc order purporting to correct finding of guilt on two charges of third-degree burglary to two counts of second degree burglary violated double jeopardy.

State v. Opperman, (Iowa 11/15/2001). [THIS IS A COMPANION CASE TO NAUJOKS, ABOVE] ***[1] Warrantless search of overnight guest in apartment.*** Overnight guest in an apartment has a legitimate expectation of privacy. Although probable cause existed, the warrantless search was illegal in the absence of absent exigent circumstances; here, the circumstances did not present any objective indication of fear or violence or jeopardy, nor was there any evidence of risk of escape, nor was hot pursuit or potential destruction of evidence involved. Case is remanded for new trial to remedy trial court's denial of motion to suppress. ***[2] Tainted search warrant—effect.*** Search warrant that is later found to be based on tainted information (obtained from prior unlawful search) must be examined to determine if untainted information is sufficient, as here, to establish probable cause.

State v. Reeves, ___ N.W.2d ___ (Sup. Ct. No. 00-481) (Iowa 11/15/2001). ***Second-degree murder: deliberation and premeditation not required.*** Second-degree murder only requires proof of malice aforethought, not deliberation and premeditation. (Overruling *State v. Love*, 302 N.W.2d 115 (Iowa 1981)), and its progeny regarding the inference of malice accompanying the use of a deadly weapon, which in turn referenced an opportunity to deliberate: "[t]he use of a deadly weapon, accompanied by an opportunity to deliberate, even for a short time, is evidence of malice.")

State v. Rodriquez 636 N.W.2d 234 (Sup. Ct. No. 00-763) (Iowa 11/15/2001). ***[1] 404(b) prior acts evidence.*** No abuse of discretion in admitting evidence of prior acts of domestic abuse by the defendant against the victim, as bearing on the kidnapping elements of confinement, intent to cause serious injury and intent to secretly confine. ***[2] "Subsequent bad act" evidence.*** Error, if any, in admitting evidence of a subsequent act of domestic violence was harmless. ***[3] Battered women's syndrome expert evidence.*** No abuse of discretion in admitting expert testimony on battered women's syndrome, as assisting the jury on the significance and meaning of the defendant's conduct and victim's reaction as well as assisting on disputed issues of confinement and intent. ***[4] Unpreserved claims not reviewable on appeal.*** Defendant failed to preserve error on his claim the trial judge was not impartial. ***[5] Lesser included offenses—domestic abuse.*** Domestic abuse assault is not a lesser included offense of willful injury (as d.a. requires additional element of particular type of relationship).

State v. Sutton 636 N.W.2d 107 (Sup. Ct. No. 99-1245) (Iowa 11/15/2001). ***Sufficiency of the evidence—aiding and abetting vehicular homicide.*** Insufficient evidence existed on the "recklessness" element of vehicular homicide to support passenger's conviction as aider and abettor of driver whose vehicle struck and killed a child. "Recklessness" under section 707.6A(2)(a) requires a showing of conduct "fraught with a high degree of danger, conduct so dangerous that the defendant knew or should have foreseen that harm would flow from it." The driver's actions may have been negligent but were not "such an extreme departure from ordinary care as to constitute recklessness." This finding reinforces the conclusion that defendant's conviction, as the vehicle's passenger, could not stand.

December 2001

State v. Bonstetter, 637 N.W.2d 161 (Sup. Ct. No. 00-2044) (Iowa 12/19/2001). ***[1] Restitution—"offset" authorized only by statute.*** The restitution statute does not confer authority on the district court to include an offset in a restitution order. The only exception is an allowance for an offset for amounts paid the victim by insurance. ***[2] Restitution—costs of audit.*** While common sense dictates that an audit was necessary in the case of a $422,000+ conversion of money by defendant-employee, the reviewing court will not simply infer that the audit was

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necessary, fair and reasonable when challenged by defendant, absent proof to support the inclusion of the audit in the restitution order.

State v. Burgess, ___ N.W.2d ___ (Sup. Ct. No. 99-1159) (12/19/2001). ***[1] Guilty pleas—rights waived.*** Statute of limitations and speedy indictment claims are waived by an *Alford* plea. ***[2] Double jeopardy—dismissal of "theft by misappropriation" charges, later charge and conviction of "theft by deception" charges.*** Even if the dismissal of "theft by misappropriation" constituted an acquittal of that charge, it was proper for the State to re-indict and convict defendant on charges of "theft by deception" arising from the same facts, as the two charges are not the same offense for purposes of double jeopardy.

State v. Cagley, ___ N.W.2d ___ (Sup. Ct. No. 00-927) (12/19/2001). ***[1] Hearsay—excited utterance—recanting domestic abuse victim statement.*** Given the standard of review—deferring to the trial court's factual findings and affirming if substantial evidence supports them—alleged domestic-abuse victim's statements, which she recanted in part in court, were properly ruled not to fall within "excited utterance" or "residual hearsay" exceptions by district court. (District court's ruling based on following: (1) time between statement and event not so great as to necessarily fail excited utterance test, but was long enough to permit fabrication of a story; (2) many of statements were in response to questions by officers; (3) declarant was of sufficient age as to lack natural spontaneity of statements attributed to declarants such as children; (4) declarant was not hysterical or even "highly emotional" in tape-recorded interview to which judge listened; and none of the written reports noted any unusual emotional condition that would support an excited-utterance finding. ***[2] Hearsay—residual hearsay exception.*** District court's ruling that recanting witness's original statement did not fall within residual hearsay exception was supported by substantial evidence; predicated on findings that (1) declarant was not inherently trustworthy because of her age and opportunity to fabricate the allegations in the context of the witness's recantation of the statements under oath along with an explanation of her motivation for the original statements.

State v. Jacobs, __ N.W.2d ___ (Sup. Ct. No. 00-1150) (Iowa 12/19/2001). **[1] Resentencing—scope of proceedings upon remand.** Absent limiting language in the remand order, the district court was empowered to reconsider all aspects of the defendant's sentence except for legal restrictions on sentencing that were presented and decided in the defendant's first appeal. **[2] Sentencing—discrimination based on ADA status.** ADA decision (*Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 118 S.Ct. 1952, 141 L.Ed.2d 215 (1998)), mandates that specific services otherwise provided to prison inmates shall not be denied as the result of a disability. Defendant has failed to demonstrate that the sentence discriminated against him based on a real or supposed disability. **[3] Aggregation of theft/forgery charges.** While the State has discretion in deciding whether to aggregate multiple theft or forgery charges as provided by statute, it is not required to do so nor is the district court required to merge multiple offenses into one offense for sentencing purposes. **[4] Consecutive sentences and due process — proof of all elements beyond a reasonable doubt.** *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), has no application to the court's authority to order consecutive sentences without requiring the State to charge aggravating factors or prove such factors beyond a reasonable doubt. Statutes that afford discretion with a sentencing court to impose consecutive sentences do not violate due process. **[5] Recusal by judge on remand.** Only personal bias or prejudice stemming from an extrajudicial source stand as disqualifying factors per se; defendant's convictions did not result from a bench trial and the Supreme Court finds no basis for concluding that the sentencing judge abused his discretion in failing to recuse himself. **[6] Reasons for consecutive sentence—same as for denying probation.** "The fact that the reason given...for consecutive sentences was the same reason...for not granting defendant probation does not present a basis for rejecting that reason as the controlling consideration for the imposition of consecutive sentences." The reason (the high degree of culpability for an enormity of 30 crimes of which defendant was convicted) adequately supported the decision as to both the denial of probation and the imposition of consecutive sentences.

State v. Miller, 637 N.W.2d 201 (Sup. Ct. No. 00-644) (Iowa 12/19/2001). Speedy trial. State's one-day delay in providing defendant speedy trial was not supported by "good cause" for missing the deadline. Defendant timely filed his pretrial motions. The last available regular trial date in Marshall County before the speedy-trial deadline was November 30 but the court's ruling on the motions was not filed until December 2; thirty-eight days after the hearing and seven days before the speedy-trial deadline. The trial was set for the next available trial date following the ruling, one day after the speedy trial period ran. "Given [defendant's] demand for speedy trial and strict adherence to pretrial deadline, only a strong reason would

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justify departure from [rule 27's] mandate. Unfortunately the record before us furnishes *no* reason for the delay, let alone a strong one. As a result, we cannot say the court properly exercised its limited discretion under the rule."

January 2002

In re Property Seized from Terrell, ___ N.W.2d ___ (Sup. Ct. No. 97-1245) (1/24/2002). ***[1] Forfeiture of item based on acts committed as a juvenile.*** Petitioner's conduct, even though prosecuted in juvenile court, was an act or omission which is a public offense covered by Iowa Code section 809A.3 (1997), and was therefore a proper basis for forfeiture. ***[2] Forfeiture: disproportionality analysis.*** The comparison in a disproportionality analysis must be made between the value of the property to be forfeited and the severity of the offense as viewed by the legislature, not the actual sanction imposed.

Maghee v. State/Munz v. Iowa Dist. Ct. for Jones County, ___ N.W.2d ___ (Sup. Ct. No. 99-1478) (1/24/2002). ***Postconviction attack on disciplinary proceedings: no right to court-appointed counsel.*** No state or federal constitutional right to counsel exists for a postconviction petitioner challenging disciplinary actions. Petitioners' equal-protection argument also fails under both state and federal constitutions because they fail to identify any disparate treatment that impacts a class of persons to which they belong. The district court correctly determined that there was neither a statutory nor a constitutional basis for providing counsel to these postconviction applicants at state expense. Even assuming discretion to appoint counsel in some cases in which no statutory right to counsel is provided in challenges brought under section 822.2(6), the court remains unconvinced that such a power carries with it the power to order the State to compensate counsel thus appointed.

State v. Bullock, ___ N.W.2d ___ (Sup. Ct. No. 00-1570) (1/24/2002). ***[1] Merger: 2nd-degree sexual abuse into 1st-degree burglary conviction.*** The crime of second-degree sexual abuse does not meet the legal-elements test to properly be considered a lesser-included offense of first-degree burglary because it is possible to commit first-degree burglary under the sexual-abuse alternative without also committing second-degree sexual abuse. Furthermore, the court is not at liberty to broaden the sexual abuse element of the burglary offense, which the legislature has expressly defined in a narrow manner, and the burglary statute is not susceptible to the broad interpretation of the kidnapping statutes adopted in our prior cases. ***[2] Sex offender registry.*** An incarcerated defendant's duty to register as a sex offender commences upon his release from prison, and the determination of the length of any required registration is an administrative decision initially committed to the Department of Public Safety. The sentencing court was without authority to determine the length of any future registration by the defendant. Until the Department has made a decision on the defendant's term of registration, there is no concrete controversy, and any adjudication by the district court prior to an administrative decision and a request for judicial review of that decision is premature. The nature and extent of the defendant's registration obligation are issues that are not ripe for our review. ***[3] Appellate procedure.*** The State was not entitled to appeal as a matter of right, but the court proceeded as though the proper form of review had been sought. The propriety of merging second-degree sexual abuse into a conviction for first-degree burglary raises a question of law important to the judiciary and profession and discretionary review is granted.

State v. Formaro, ___ N.W.2d ___ (Sup. Ct. No. 01-0464) (1/24/2002). ***General sentencing statute: no authority to suspend portion of indeterminate sentence.*** The language in section 901.5(3), which authorizes a sentencing judge to suspend the execution of the sentence or any part of it, is only intended to authorize the suspension of a portion of a sentence in regard to determinate sentencing orders. No such authority exists with respect to an indeterminate sentence.

State v. Formaro, __ N.W.2d ___ (Sup. Ct. No. 00-1082) (1/24/2002). ***[1] Sentencing: no abuse of discretion generally.*** No abuse of discretion in imposing a term of incarceration; record did not support any inference that the district court considered unproven or unprosecuted additional offenses when sentencing; no abuse of discretion in setting the terms of the original $50,000 cash appeal bond. ***[2] District court jurisdiction over bail following conviction.*** Iowa Code section 811.5 (1999) contemplates that bail following conviction is collateral to the merits of any issues raised on appeal from the judgment and sentence, and authorizes the district court to consider motions and applications regarding bail during the appeal. ***[3] Jurisdiction to increase appeal bond during appeal.*** The district court has jurisdiction to consider the State's application to review the appeal bond following defendant's appeal. ***[4] Preservation of error: challenge to changed appeal bond.*** Defendant who fails to separately appeal an additional order changing the conditions of an appeal bond fails to preserve the issue for review on the original appeal.

State v. Hernandez-Lopez, ___ N.W.2d ___ (Sup. Ct. No. 00-1855) (1/24/2002). ***[1] Material witness statute: substantive due process.*** Iowa's material witness statute

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(section 804.11) does not violate constitutional notions of substantive due process. The government interest in securing the testimony of material witnesses for the prosecution of felony offenses is compelling, and the statute allows a magistrate to exercise discretion to provide for less restrictive alternatives to secure a witness' appearance at trial. In addition, the pre-trial detention imposed by the material witness statute does not constitute impermissible punishment without a trial. Further, section 804.11 is regulatory in nature, and the infringement imposed by the statute is not excessive in relation to the regulatory goal. To comply with substantive due process, an officer must have probable cause to believe it is reasonably likely the individual will be unavailable for trial. Incorporating this interpretation into the statute, the court concludes the pre-trial detention of a material witness is not excessive in relation to the regulatory goal. ***[2] Material witness statute: procedural due process.*** The provisions of sections 804.11 and 804.23 provide procedures to guide law enforcement personnel and judicial officers in the arrest of a material witness. These procedures must be strictly followed to prevent an abuse of the powers provided by the material witness statute. In addition, a defendant should be provided an opportunity to be heard at a later time similar to a preliminary hearing, and the defendant should be permitted to be heard on all of the relevant issues, including whether a less restrictive alternative is a viable option as well as to present evidence. While the court prefers that an officer obtain an arrest warrant before arresting an individual as a material witness, exigent circumstances may exist where the warrant requirement would unreasonably frustrate an officer's efforts to locate a witness.

State v. Hischke, ___ N.W.2d ___ (Sup. Ct. No. 00-1924) (1/24/2002). ***Ineffective assistance: informing the court of perjury.*** Trial counsel may not knowingly present perjured testimony, and when counsel knows a client has committed perjury or plans on doing so, counsel may reveal the perjury to the court. Although not necessarily the sole alternative available to the ethical defense counsel, (nor is counsel required to proceed this way), when convinced with good cause that defendant's proposed testimony would be untruthful, counsel performs competently in informing the court of the possibility that defendant would perjure himself. It is not necessary for the attorney to conduct an independent investigation of the facts nor is it necessary that counsel have "actual knowledge" that the proposed testimony is perjurious.

State v. Moore, ___ N.W.2d ___ (Sup. Ct. No. 00-2080) (1/24/2002). ***[1] Written guilty pleas to felony charges again condemned.*** As in *State v. Hook*, 623 N.W.2d 865, 869-70 (Iowa 2001), the court stresses that a district court must literally follow the requirements of rule 8(2)(b) in taking defendant's plea to a felony charge, *i.e.*, requiring specified personal colloquy between court and defendant. ***[2] Ineffective assistance—no per se prejudice from allowing violation of 8(2)(b) guilty plea to felony.*** Court declines to adopt a per se ineffective-assistance-of- counsel rule in guilty-plea cases that would excuse defendant from filing motion in arrest of judgment where requirements of 8(2)(b) were not literally complied with in plea to felony.

2001 Iowa Judicial Branch Award Recipients

The Iowa Judicial Branch announced the recipients of the 2001 Iowa Judicial Branch Awards. The awards were established to recognize outstanding contributions to the administration of justice.

Distinguished Service

Leesa McNeil, Sioux City, was selected as the recipient of the Distinguished Service Award. This award was established to recognize a court employee who has at least ten years of service in the court system, has exemplified a sustained level of exceptional service to the courts, has demonstrated a strong commitment to public service, and has continuously initiated efforts to improve the administration of justice in Iowa. Ms. McNeil has worked for the Judicial Branch for the past nineteen years and has served as the district court administrator for the Third Judicial District for over 18 years. Among other things, she chaired the Court Information Summit, which resulted in the development of a wide range of statistical reports used to evaluate the workload of the trial courts. Ms. McNeil has been a strong supporter of the Court Appointed Special Advocate program and served on the Third District CASA Advisory Board. She has been involved in the creation of the district's mediation program and drug court.

Amicus Curiae

The **Monroe County Board of Supervisors** were named the winner of the Amicus Curiae Award, which was established to recognize a person or group who has made a significant contribution to the administration of justice or who have contributed to building public support for the judiciary. The members of the board, Supervisors Paul Koffman, Denny Ryan and Mike Beary, were recognized for their leadership roles in renovating the Monroe County Courthouse, for their efforts to enhance courthouse security, and for forging a collaboration with local court officials and employees to improve public service.

Innovation Award

District Court Judge Richard Morr, Chariton, was selected as the recipient of the Court Innovation Award. The award was established to honor persons who have demonstrated leadership in the development and implementation of an innovative program or process that has improved the delivery of court services, public access, or the administration of justice. Judge Morr, who has served on the bench for 22 years, was Chief Judge of the Fifth Judicial District from 1986 to 1995. During his tenure as chief judge, Judge Morr developed and implemented an innovative case management system through the use of early case scheduling conferences that reduced delays. He was also instrumental in the development of the Polk County Criminal Justice Information Network (CJIN), which provides judges with up-to-the-minute information on criminal cases. The Polk County CJIN program served as a model for similar systems in other counties.

Meritorious Service Award

The Judicial Branch recognized five court employees for meritorious service. The Meritorious Service Award was created to honor court personnel who have maintained a consistent level of high service to the public and to the courts.

John Monroe, Cedar Rapids, was named the winner of the Meritorious Service Award for part-time judicial officers. Mr. Monroe has served as a hospitalization referee in Linn County for more than 20 years.

Bert Ann Ray, Nevada, received the Meritorious Service Award for court administrative staff. Ms. Ray has been the Court Attendant for the District Court in Story County for the past 25 years.

Pat Hendrickson, Davenport, was named the winner for the Meritorious Service Award for juvenile court services. Ms. Hendrickson has served as Chief Juvenile Probation Officer for over 20 years.

Vicki Krohn, Harlan, received the Meritorious Service Award for clerk of court personnel. Ms. Krohn has served in the Shelby County Clerk's office since 1974.

Nancy Timmons, Jefferson, was selected as the winner of the Meritorious Service Award for court reporters. Ms. Timmons has served as an official court reporter for over 28 years.

The program was established in 1999 by the Iowa Supreme Court to recognize exemplary public service by court personnel and to acknowledge outstanding contributions to the administration of justice by persons outside the Iowa court system. A committee chaired by Carroll Edmondson, District Court Administrator for the 6th District, reviews the nomination applications and selects a group of finalists. The Chief Judges select the award winners.